


Syria and the Chemical Weapons Ban

Other Publication**Author(s):**

Barmet, Céline; Thränert, Oliver 

Publication date:

2016-11

Permanent link:

<https://doi.org/10.3929/ethz-a-010818383>

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Originally published in:

CSS Policy Perspectives 4(8)

Syria and the Chemical Weapons Ban

Syrian violations of the Chemical Weapons Convention put this landmark agreement at risk. State parties to the CWC must ensure the Syrian Government fully complies with it.

By Céline Barmet and Oliver Thränert

On November 11, 2016, the Executive Council (EC) of the Organisation for the Prohibition of Chemical Weapons (OPCW), the Chemical Weapons Convention's (CWC) implementation organ based in The Hague, voted with a 2/3 majority in favour of further measures against the Syrian government's illegal possession and use of chemical weapons. Since there is unmistakable evidence of this government using chemical weapons on numerous occasions, Damascus is in blatant violation of the CWC. The CWC expressly prohibits the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons. The decision taken on November 11 is intended to finally ensure the Syrian government's full compliance with the CWC and to avoid a substantial weakening of this convention that would have followed from further inaction. However, abandoning the core principle of consensus voting that characterised the work of the OPCW thus far, can also be problematic. Preserving the CWC as a well-functioning regime is essential, because new developments in chemistry as well as the life sciences are currently emerging at an alarming rate. Without a strong CWC, states may decide to manufacture and use entirely new categories of chemical agents in the future.

An inaccurate Syrian declaration

During the summer of 2013, the Syrian government of Bashar al-Assad was widely suspected of using chemical agents against rebel groups on several occasions. On September 14, 2013, the USA and

Russia agreed that Syria should join the CWC and destroy all its chemical weapons stocks. This was underpinned by UN-Security Council Resolution 2118 of September 27, 2013 which identified "the proliferation of chemical weapons, as well as their means of delivery" as a "threat to international peace and security." Further, the resolution stated that "the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to other States or non-State actors."¹

Subsequently, Syria became a state party to the CWC on October 14, 2013. On October 24, 2013, the Syrian government declared possession of 1,300 tons of chemical agents and precursors. While Syria – according

KEY POINTS

- Contrary to its obligations under the CWC, Syria did not declare its entire arsenal of chemical agents and continues to attack its civil population with chlorine barrel bombs.
- Whilst the UN Security Council is blocked due to Russia's veto, the Executive Council of the OPCW took measures directed against Syria with a 2/3 majority.
- This, however, effectively abandoned the well-established core principle of consensus voting within the OPCW.
- Introducing majority voting is still preferable to complete inaction in the face of blatant Syrian CWC violations.

to the rules of the CWC – would have been responsible for the destruction of these agents by itself, these stocks were transported out of Syria and destroyed with the assistance of the USA, Germany, Finland and the UK. On January 4, 2016, the destruction of Syria's declared chemical weapons arsenal was completed. However, even in 2013, there was evidence that Syria had not declared the full extent of its chemical arsenal. Indeed, reports of alleged chemical weapons use in Syria continued. As a consequence, the OPCW in 2014 created two new mandates: The Fact Finding Mission (FFM) to investigate allegations of chemical weapons use in Syria, and the Declaration Assessment Team (DAT) to verify the accuracy of Syria's declaration. Hence, Syria, the first CWC member under suspicion to continuously use chemical agents, was put under a special verification regime.

In the course of its missions to Syria (more than 15 so far), the DAT interviewed Syrian authorities, visited sites and collected samples. Its continuous reporting to the OPCW showed the declaration of Syria's chemical weapons program was inconsistent and its completeness and accuracy could not be confirmed. As was later explained in July 2016 by the head of the US delegation to the OPCW, Ambassador Kenneth Ward, there were "potentially declarable activities involving five chemical warfare agents – four

of which have not been identified or declared by Syria to the OPCW."² FFM teams also visited Syria on multiple occasions and concluded in early 2015 that there were several attacks using chemical weapons on Syrian territory through 2014. As a consequence of these findings, the UN Security Council unanimously adopted Resolution 2235 in August 2015. This particular resolution created the so called "OPCW-UN Joint Investigative Mechanism" (JIM) that was mandated to ascertain the perpetrators of the 2014–2015 chemical weapons attacks identified by the FFM.

Despite the evidence of its incorrect chemical weapons declaration and the ongoing use of chemical agents on its territory, the Syrian government continues to categorically deny these allegations. At the same time, the Russian Federation, Syria's closest ally, keeps welcoming "the good will of the Syrian side" and the "unequivocal evidence of [...] Damascus' willingness to cooperate with the OPCW."³

Undeniable facts

In August 2016, a report of the JIM stated that there is "sufficient evidence" for three different cases where chemical weapons were used against the civilian population in Syria in the years 2014–2015.⁴ In two cases, it was proven that the Syrian Air force used chlorine barrel bombs, while

the Islamic State (IS) used mustard gas in one case. An additional JIM report released on October 21, 2016 proved a third chemical attack conducted by the Syrian government.⁵ However, the Security Council was unable to agree on a resolution that would condemn the use of chemical weapons in Syria. Russia prevented any attempt by the USA and other council members to sanction the Syrian government. Whilst the Security Council can be expected to take the case up again, against the backdrop of the deadlock in New York, the responsibility of taking action against Syria's non-compliance with the CWC falls upon the OPCW's Executive Council (EC) in The Hague. In October 2016, it met for the first time since the release of the JIM Report. As it turned out, though, the US-Russian confrontation that had characterized the debate in the UN Security Council continued in the EC.

Two different realities

The US delegation presented a draft resolution that demanded that the Syrian Arab Republic be stripped of its rights and privileges within the OPCW. According to this, the Syrian delegation would have lost its right to vote and

FURTHER READING

Chemical weapons in Syria: Will there be justice for a serial offender?

Amy E. Smithson (*Bulletin of the Atomic Scientist*, 29.9.2016)

This analysis offers an overview of the use of Chemical Weapons in the Syrian Civil War by outlining specific events and by including scientific results of international inspections conducted by the OPCW and the UN. It includes further links to video documentary, UN-reports and press articles that further underline the chronology.

The Chemical Weapons Convention (CWC) at a Glance

Daryl G. Kimball (*Arms Control Association*, 13.9.2013)

The Executive Director of the Arms Control Association provides facts and figures to the OPCW by shortly explaining the convention's declaration requirements, prohibitions and destruction requirements. He is also providing a list of (previous) possessor states – excluding Syria.

The Chemical Weapons Convention: Hallow Idealism or Capable Mechanism? The Syrian Interventions as a Test Case

David Martin (*37 Loy. L.A. Int'l & Comp.L.Rev.* 31, 7.1.2015.)

This article analyses the background of chemical weapons use, the legal framework of the CWC and the events relating to Syria. David Martin further argues why the CWC framework should serve as a model for further international disarmament agreements like the Non-Proliferation Treaty (NPT) or the Biological Weapons Convention (BWC).

would, *inter alia*, have lost its right to nominate its own officials for senior posts in the OPCW. More importantly, the US proposal asked the Syrian government to declare within 30 days its entire stock of chlorine, toxic chemicals, munition and other objects that could be used to deliver chemical weapons. This US proposal went far beyond the usual declaration requirements for CWC members. Chlorine as such is not listed as a declarable substance under the CWC because it is used in large amounts for industrial, medical, agricultural or pharmaceutical purposes. Nevertheless, according to the CWCs general purpose criterion, no toxic chemical must be used for hostile purposes. Hence, the use of chlorine as a chemical weapon is a clear violation of the CWC.

Russia opposed the US approach and saw no need to sanction the Syrian government. Moscow holds only the Islamic State accountable for the use of chemical weapons in Syria. It therefore requested the Syrian government to investigate the findings published by the JIM. As result of this US-Russian confrontation, the EC was deadlocked and decided to suspend its session. During this suspension, however, Spain came up with a draft decision to facilitate the process. The Spanish draft decision demands, *inter alia*, that the “elimination of the Syrian Chemical Weapons Programme” be kept as an agenda item for all future EC sessions until the Syrian chemical weapons programme is fully eliminated. Further, the Secretariat shall conduct inspections at all sites identified by the last two JIM reports as well as at facilities of the Syrian Scientific Studies and Research Centre in Barzah and Jamrayah with full access to all buildings at these sites and all rooms within these buildings. Inspections are to be conducted every six months until the EC decides to cease them. The Syrian government shall fully cooperate with these inspections.⁶

The OPCW must not fail

Unlike the permanent members of the UN Security Council, in the EC of the OPCW, no member state has veto power. However, decisions have to be based on a majority vote as long as Russia and other CWC members are not willing to sanction Syria. So far, CWC state parties have avoided majority voting in an effort to uphold the unity of the CWC community. Consensus voting has always been a core principle within the CWC so as to ensure that all member states are treated on an equal basis. A disregard of consensus could result in the creation of different camps constantly opposing each other regarding the implementation of the CWC, finally producing a weakening, not a strengthening, of the Convention and its organs.



A cleaner vacuums the stage prior to an OPCW news conference at the Bel Air Hotel in The Hague October 11, 2013. Reuters / Michel Kooren.

Given the imperative to take action, the US delegation withdrew its draft and the EC decided to vote on the Spanish proposal. According to the rules given to the EC, this body may adopt decisions based on a 2/3 majority. For the sake of a sustainable implementation, a much higher score would be preferable. A number of member states are in principle opposed to abandoning the core principle of unanimity and fear that majority voting may later be directed against states other than Syria. To soften these concerns, the Spanish draft resolution made clear that it was exclusively addressing Syrian issues and therefore managed to accommodate concerns of some EC member states. As a result, the Spanish draft decision was adopted by 28 votes, just enough to reach the 2/3 majority, with major state parties such as Russia, China, and Iran voting against.

Although consensus voting got sacrificed, this vote was clearly preferable to the total inaction of the CWC community which would have resulted otherwise. Not only would Syria's illegal possession of chemical weapons have continued to be ignored, but so would their continuous use against an unprotected civilian population. In this regard, there are already demands that these actions should be treated as war crimes and/or crimes against humanity and therefore be referred to the International Criminal Court (ICC) in The Hague. Since the ICC has not (yet) been mandated to open an investigation against Syrian perpetrators, it seemed even more urgent at this point that the EC of the OPCW resolutely decides on measures within its own mandate. Therefore, this vote is a sign that Syria's continuous non-compliance to the CWC will not be tolerated. It should be welcomed because it is – despite the abandonment of the core principle of consensus voting within the OPCW – clearly the better alternative as com-

pared to ignoring Syria's fundamental CWC violations. However, the EC decision is rather weak. Indeed, it includes additional inspection requirements for Syria, but implementation of this decision is not assured, because major actors such as Russia and China did not support the EC resolution. Given the continuous use of chemical weapons by the Syrian government, one could also argue that the EC should have decided for sanctions along the lines of the original US proposal. The fact that this did not meet the approval of a clear majority shows, how difficult it is to take decisions against state parties that are found to be non-compliant. It is of high importance now that the OPCW proves its ability to maintain a balance between ensuring Syria's compliance and ensuring cooperation between its member states.

When the CWC entered into force in May 1997, the OPCW decided to "act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction."⁷ Since then, the OPCW has achieved a lot. It has verified the destruction of more than 67,000 tons of chemical agents and conducted more than 6,300 inspections. In 2013, the OPCW received the Nobel Peace Prize for these achievements. However, if the OPCW proved to be unable to act against Syria and its CWC violations, the organization – regardless of its uncontested competence and expertise – would be in danger of being marginalized. Without an effective ban on chemical weapons, new

chemical agents could end up being used on future battlefields. Therefore, the OPCW with its 192 member states must not fail now in fulfilling its mandate.

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Dr. Oliver Thränert is Head of Think Tank at CSS
www.css.ethz.ch/en/center/people/thraenert-oliver.html

Céline Barmet is Research Assistant Think Tank at CSS
www.css.ethz.ch/en/center/people/barmet-celine.html

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 ISSN: 2296-6471